

REMARKS

In the Final Office Action dated November 25, 2009, it is noted that claims 1-4 and 6-11 are pending in this application; that the Information Disclosure Statements submitted by Applicants on September 10, 2009 and on October 5, 2009 have been found to be in compliance with the patent regulations and have been considered by the Examiner; that claims 1-4 and 6-11 stand rejected under 35 U.S.C. §103.

By this amendment, claim 8 has been amended to correct a typographical error.

Claims 12-13 have been added to clarify a feature suggested by the Examiner on page 4 of the Final Office Action. No new matter added. Applicants believe that both claims are allowable.

Cited Art

The following references have been cited and applied in the present Office Action: U.S. Patent Application Publication No. 2005/0174943 to Wang (hereinafter referenced as “Wang”); U.S. Patent Application Publication No. 2002/0067729 to Fukuda et al. (hereinafter referenced as “Fukuda”); and U.S. Patent Application Publication No. 2002/0191572 to Weinstein et al. (hereinafter referenced as “Weinstein”).

Rejection of Claims 1-4 and 6-11 under 35 U.S.C. §103

Claims 1-4 and 6-7 stand rejected under 35 U.S.C. 103 as being obvious over Wang in view of Fukuda. Claims 8-11 stand rejected under 35 U.S.C. 103 as being obvious over Weinstein in view of Fukuda, in further view of Wang. These rejections are respectfully traversed.

It is believed that a prima facie case of obviousness has not been established because the reference of Wang is not prior art to the present application. According to the present Office Action, Wang forms the basis, at least in part, for the rejection of each independent claim and the dependent claims in view of their dependence on the respective independent claim. *See Office Action at pages 5 and 6 for the application of Wang to claim 1 and at page 10 for the application of Wang to claim 8.*

Wang bears a filing date that is subsequent to the filing date of the present PCT application. Specifically, the Wang filing date of April 11, 2005 is more than 18 months subsequent to the filing date of the present PCT application (September 30, 2003). Even if the applied teachings of Wang were present in the parent application (Wang is a CIP of parent application US 10/938,379), a position with which Applicants neither acquiesce nor agree, the filing date of the Wang parent, of September 10, 2004, is also subsequent to the filing date of the present application.

If the rejections based on Wang rely on the filing date for the provisional U.S. Patent Application No. 60/481,351 cited in the benefit of priority claim in Wang, then those rejections are improper because there is no showing in the Office Action that the alleged teaching cited in Wang is supported by the provisional application to which the benefit of priority claim is claimed. Applicants' representative has studied the provisional patent application papers available through public PAIR, and believes that at least some of the alleged teachings of Wang (e.g., Figure 2, paragraphs [0012], [0013], [0017], and [0022]-[0024]), as interpreted and applied to Applicants' claims, lacks support in the provisional U.S. Patent Application No. 60/481,351. Thus, the teachings relied on in the Office Action are not entitled to a date prior to the filing date of the present application, and a prima facie case of obviousness has not been established with respect to each and every pending claim in this application.

It is further submitted that Fukuda does not teach, show, or suggest all the limitations defined in claim 1 and the claims dependent thereon, namely claims 2-4 and 6-7. Additionally, it is submitted that the combination of Fukuda and Weinstein do not teach, show, or suggest all the limitations defined in claims 8-11.

In light of all the remarks above, it is submitted that the limitations of independent claims 1 and 8 and the claims dependent thereon would not have been obvious to a person of ordinary skill in the art upon a reading of Fukuda and Weinstein, either separately or in combination. Thus, it is believed that claims 1-4 and 6-11 are allowable under 35 U.S.C. §103. Withdrawal of these rejections is respectfully requested.

New Claims

New claims 12-13 have been added, with claim 12 depending from claim 1 and claim 13 depending from claim 8. Each claim is directed to a feature suggested by the Examiner on p. 4 of the Final Office Action. Claim 12 recites that "*the VLAN number is the identifier that identifies the path through the network having transmission capability sufficient to provide the determined QoS level/service level*" and claim 13 recites that "*the VLAN number is the identifier that identifies the path through the network having transmission capability in accordance with the QoS level/service level established for the frame.*"

Applicants submit that both claims are allowable over the cited references at least for the same reasons set forth above.

Conclusion

In view of the foregoing, it is respectfully submitted that all the claims pending in this patent application are in condition for allowance. Entry of this amendment, reconsideration of this application, and allowance of all the claims are respectfully solicited.

If, however, the Examiner believes that there are any unresolved issues, it is requested that the Examiner contact the Applicants' attorney, so that a mutually convenient date and time for a telephonic interview may be scheduled for resolving such issues as expeditiously as possible.

Respectfully submitted,

Date: March 25, 2010

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